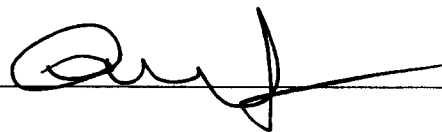


Special Report Required by the Appropriation
Committee - Conference Report 108-401

Buy American Act Annual Report
Department of Health and Human Services

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Introduction

In the Conference Report No. 108-81, the Appropriations Committee requested that the Department of Health and Human Services submit a report of total dollars of any articles, materials or supplies purchased by the Department that were manufactured outside of the United States. Specifically, the conferees directed the Secretary to issue a report not later than 60 days after the end of fiscal year 2004 on the amount of acquisitions made by the Department during such fiscal year of articles, materials, or supplies that were manufactured outside the United States.

Background

This requirement implements an annual Buy American Act information collection and reporting requirement as included in Buy American Improvement Act of 2003. In 2003, the Act was amended (Buy American Improvement Act of 2003) to increase the requirement for American made content and to tighten the waiver provisions. The Act as amended requires all federal agencies to submit annual reports on its foreign sources. The report shall indicate the following information: (1) separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of Health and Human Services that were manufactured outside of the United States; (2) an itemized list of all waivers under the Buy American Act that were granted with respect to such articles, materials, or supplies; and (3) total dollar value of any articles, materials, or supplies for which the Act was waived.

Buy American Act Reporting

The Department of Health and Human Services is the principal agency for protecting the health of all Americans and providing essential human services, especially for those who are least able to help themselves. The Department includes more than 300 programs, covering a wide spectrum of activities. Some include: health and social science research, preventing disease, including immunization services and assuring food and drug safety. The Department's programs are serviced by nine acquisition offices including the National Institutes of Health, Food and Drug Administration, Centers for Medicare & Medicaid Services, Indian Health Services, Health Resources and Services Administration, Substance Abuse and Mental Health Services, Agency for Health Care Research and Quality, Program Support Center, and Centers for Disease Control.

In complying with the Buy American Act, HHS recognizes the policies and procedures set forth in Part 25, of the Federal Acquisition Regulations (FAR) when spending federal dollars. The Buy American Act restricts the purchase of supplies that are not domestic end products for use within the United States with some exceptions. When one of the following exceptions apply (a through d), the Head of the Contracting Activity (HCA) may exercise his authority to grant a waiver to purchase an article, material, or supply manufactured outside of the United States.

- (a) Public interest. The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an

agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act. (b) Nonavailability. (1) A nonavailability determination has been made for the articles listed in 25.104. (2)(i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. (ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201-1 in accordance with agency procedures, for possible addition to the list in 25.104. (3) A written determination is not required if all of the following conditions are present: (i) The acquisition was conducted through use of full and open competition. (ii) The acquisition was synopsisized in accordance with 5.201. (iii) No offer for a domestic end product was received. (c) Unreasonable cost. The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with 25.105 and Subpart 25.5. (d) Resale. The contracting officer may purchase foreign end products specifically for commissary resale.

Buy American Act Purchases

HHS did purchase articles, materials, and supplies manufactured outside of the United States during FY 2004, however those purchases were made pursuant to the North American Free Trade Agreement (NAFTA) and other Trade Agreements Acts as set forth in Part 25 of the FAR which waives applicability of the Buy American Act. For example, sufficient dollars were spent for foreign manufactured medical supplies, equipment and vaccines, however no dollars spent on the purchase of articles, materials or supplies applicable to the Buy American Act. Therefore, no waivers were granted during FY 2004.